Evaluation of Imprisonment Punishment Substitutions in Shia Jurisprudence

Seyed Amir Hasheni  
A Graduate of Seminary, MSc of Criminal Law and Criminology, Lecturer of Payam Nour  
University of Save

Seyed Ebrahim Hosseiny  
PhD of jurisprudence, Department Member of Teaching and Training Institute of Imam  
Khomeyni

Abstract  
Imprisoning is one of the typical punishments in the retribution regulations especially in Islamic republic of Iran for some of commitments to treat and avoid wrong doers. Imprisoning although is preventive to some extend and it is influential, there are some harms for it- learning other crimes by the criminal in prison- of what is called as the crime university. At the present time one of the serious problems in the Iranian society is the entrance of thousands of people to prison due to crimes commitment. Also the prisoner personality damaging and his family and forcing costs to society and prison, the living problem for the prisoner family due to losing job and emersion of contagious illneses and other negative effect are considered of these type of punishments problems. According to this basis and Iran Islamic retribution law principals and Shia jurisprudence, prison is not accepted in Islam as it is usual in the human daily world because Islam not only regard prison in most cases unbeneficial, rather it has realized it damaging. According to the samples and examples of punishment in retribution we see that lashing punishment is more than imprisonment. So according to the imprisonment identity and based on the definite jurisprudence idea (Discretionary as it deems ruling) that referred to the authority and benefit consideration in the ruler view in punishment, hence prison is omissible and it could be changed to cash punishment and deprivation from some social rights and other cases. The discussion method in this research is descriptive and analytical by the use of jurisprudence and legal sources

Keywords: crime, prison abnormalities, prison substitution.
Introduction:

Everywhere there is the society, the law also exists. The retribution system in every society is accepted based on the values that are stabilized in that society. In Islamic religion also there are some determined collections of values related to the individual and social issues and every action that is performed against these values will be regarded as the three elements in crime steps and the criminal should be punished. One of the most important sections in every jurisprudential system is the punishment law and different punishments that provide order in the society and also it is the guarantee for other law courses execution. In the primary prison of the executional guarantee, it will be really intensive and rough but gradually these punishments are reduced, and at the present time the aim of executions is the human purposes and delinquent is regarded as the individual who needs reformation and recovery and if the punishment could reform and recover the delinquent and provides lessons for him, it will be beneficial, today prison is more frequent than others among the punishments, and it is viewed as the method for recovery and reformation but the criminological studies have shown that imprisonment does not have any benefit to destroy the roots of delinquencies adequately, although for some time the society is saved, it has the low capability to recover and reform criminals and it leads to finding crime background for the delinquent that it is just a personal harm and its benefit for the society is really low, by attention to this basis and Islamic republic of Iran regulations jurisprudence, in this research has been attempted to evaluate the issues related to the basis and items for the prison punishment substitution in the Quran verses and also anecdotes in the Shia jurisprudence.

The research literature

Crime definition in the Islamic jurisprudence

The crime in terminology means the guilt and failure in performing norms and accepted ethical regulations in the society. The crime in Quran language and also in Islamic jurisprudence includes the action performance or telling a statement that is banned by the divine laws and in other word the activities and statements that are assumed as crime which are against the rules or the banned and avoidance as mentioned in Maedeh surah at verse 12th. In verse no.48 of Qhamar surah also delinquents are those who commit wrong doings and unacceptable behaviors and also the term observer to the actions and behaviors is attributed to those who are in wrong path. The same meaning could be understood from verses that are cited about the similar crimes as the ego nemesis, the body nemesis, blood money, adultery punishment, ejaculation punishment, steal punishment which are mentioned in Quran

Punishment targets in Islam

A- The beneficial target and terrifying

The Islamic punishment regulations have the beneficial targets and as the result the quality of these punishments are the fear due to their execution and it will be the obstacle for interest to commit the crime and in other word the punishment commitment in society is the alert for others
B- Providing the justice and security

By delinquent punishment, those people who seek the justice will find peace and criminologists believe that the revenge thinking is removed and delinquent also is punished.

C- Avoiding and prevention of crime commitment

The presence of punishment for crimes leads to a kind of consideration and prudence in individuals before committing the crime or during its committing and they think of the consequences and fear of the results which avoid them from its commitment, usually this condition might lead to making the fear to believe and the individual belief about the crime blaming.

D- the recovery and treating the delinquents

Another purpose of the important punishment in Islam is the recovery and treating the delinquents. Attention to this aspect has caused that punishments find the treating dimensions and the recovery purpose samples are observable in more retributions because the criminal execution is the main axis of the retribution rule and his recovery is intended by the law.

A review on the imprisonment punishment from the law and jurisprudence and Islamic authorities

In this section we have a review on the prison punishment from divine view because today and in the Imam Zaman absence era, the imams' idea is illustrated in the form of jurisprudents expert ideas so in this section we will point out to some issues from jurisprudential view in which the imprisonment is mentioned.

This discussion is presentable in to two points: 1- arresting before the court vote and the ruler verdict 2- arresting after the court vote.

But arresting before the court vote: this issue is presented by the Islamic great jurisprudents in two cases:

1-About murdering

2-About the debts

In the first condition there are two ideas among jurisprudents, the first theory is for the Shekh Tussy and his followers, he mentioned in the book Nahayet at if anybody is sentenced to murdering, according to the blood owners request, he could be arrested for 6 days, so the blood owner presents the witness and documents and after six days possibly due to lack of reasons he will be freed and there is an anecdote documented to the great sage in which Mohammad Sokuny have mentioned from imam Sadeq that prophet arrested the accused person for six days and if the blood owners proved rational reasons, he ordered for execution and otherwise the accused person was freed.
Most of jurisprudents have followed the Shekh idea and even some of them have told that they are arrested for three days, so we can conclude that the murdering is the greatest crime and we cannot arrest more than six days.

But about the second issue, the arrestment due to debt payment avoidance, the Shekh first peace upon him mentioned in his book; the mortgagor and debtor, the debtor should be arrested if anybody claims for his property and if his insolvency is proved he is freed, then imam Ali has declared that he arrested the delinquent to the creditors and allowed them to take labor from him and account his working as their debts

**Arresting after the court verdict:**

It means that in items when the crime is proved and prison is determined as the punishment

**Imprisonment punishment defects and prison abnormalities**

**The negative values in prison**

Of the prison defects is its inefficiency in some cases and the crime making environment of prison that could be pointed out as below:

Some of the frequent expressions in prison are tattoo, gambling, wickedness, properties destruction and Fraud and deception prisoners, strike, riot, failure to deal with acts contrary to the provisions of the most prisoners, cross training delinquent acts, recruitment outside the prison into the prison for crime, theft, drug trafficking, delinquency Create different groups within imprisonment, physical and mental laziness.

**Effects and consequences of prison for some prisoners' family**

Usually one of the parents imprisonment effect on family is discussible in two fields of matters related to the wife and children, in other word a series of events resulted from imprisonment is focused on the wife and other concentrated on the child or children that two series of common and different consequences are provided. Of course these two series of problems provide other problems for the family.

**The children effectiveness from parents' imprisonment**

The children whose parents are in prison will be face with social problems and also in social acceptance by his friends in school and other social situations and frequently he or she feels contemplation, defeat, negative feeling and frustrated and all of his or her social relations are influenced relatively.

**The consequences of imprisonment for prisoner wife**

On the most frequent effect of divorce due to the prison is between the prisoner and his wife. Of course it is obvious that divorce might be an independent variable and effective factor in
imprisonment and his tendency for delinquency. If divorce occurs before imprisonment, such relation will be acceptable. But in many issues it has been observed that after the individual imprisonment, especially in issues that there is imprisonment and delinquency or the imprisonment are prolonged, the wife want to take divorce.

**The imprisonment substitution benefits**

Financial punishments are not corrupting as the imprisoning punishments and they keep the terrifying power regardless of their repetition and it its beneficial for the public treasury, according to the degree and intensity of the damages and the moral effects and balancing it will have consequences.

The occupational limiting retributions will protect the degrading effect both financially and honorably and also socially which avoids the individual from committing the crime due to fear of payment form crime.

Performing the public beneficial services for the criminal is the combination of physical and mental pressure because it will make the freedom limitation form one hand and it will make order and respect to others from other hands and the delinquent is located in the position that his experience and volition is applied. The activity in the public will provide the opportunity for the criminal so he can think of his behavior and he is far from the prison environment to compensate the damages. The considerable point includes the accused person avoidance from the prison negative impacts and his capability to provide his family requirements, having the job accompanied with passing punishment period and also protection of his family relation.

At the end we can point out to one of the most important substitutions for the imprisonment that is the protecting proceedings and confirms that the jurisprudent system should proceed to execute the security measurements and using extra and serious efforts in this direction.

**Imprisonment substitution basis**

Today the criminology policies or better to say the social defend revolution have attempted to go toward the development and tries to remove the punishment which bans freedom or put it aside. In the country the considerable population of prisoners shape a delinquents that are waiting for the court verdict and in expression they are waiting and at the present time one of the serious problems of Iranian society is the entrance of thousands of individuals to prison due to crime commitments, also the prisoners personality and his family damaging will put costs on the society and prisoner and also many living problems will be made for the prisoner family due to losing job and emersion of illness and other negative effects in these types of punishment. According to the bases and principals in Islamic republic of Iran retribution system and especially the Shia jurisprudence, prison is not accepted in the Islam regardless of its generality in usual human world.

Impressionment has the punishment identity and based on the jurisprudential regulations that prove the authority and beneficial consideration in punishment, the prison is omissible and it is possible
to change it to cash fins and deprivations from some of the social benefits and rights or obligatory working.

**Imprisonment punishment substitution types**

1-traditional methods

The social-training-recovery programs should be based on the below regulations

1- Finding opportunity and making correspondences in society that presents the facilities in accordant to the delinquents requirements
2- Making environments as the criminal own house, other house of the common living place in which the criminal life as a responsible individual who lives with the minimum supervision
3- Presenting educational, training and consultant services facilities and other social – supporting services
4- Presenting opportunities for accepting or learning social roles as a citizen; the family member, the staff or student
5- Providing opportunities for individual progress

2-conditional freedom

The conditional freedom condition is determined by the freedom committee and after determination of these conditions, prisoners are freed and that are controlled the condition by freedom agents

**Of these conditions we can name to below items:**

1- Avoiding weapon carriage or avoiding use of motorized vehicle
2- Paying cash fins or refund of some properties and objects
3- Public beneficial services
4- Living in a training –recovery and social center
5- Prisoning in house for definite time
6- Avoid living or transportation to special location

3-deprivation from social rights

These types of activities are considered on the opportunity making and deprive them from crime potential situation to reduce the crime repetition and it will have not any effect on the criminal personally and there is no need to treat them again. The incapable types of social retributions without having role in delinquent retreating ,try to prevent the delinquency commitment again by presenting the society opportunities as improper and making more situations, regardless of this factor, mentioned proceedings in different angles specially from the clinical retreating criminology is faced with challenges because the samples of social punishments incapability avoiding the possibility to repeat the delinquencies for the limit definite period of time without social and mental problems are removed. So the fundamental
challenge in the social retribution application axis is the ineffective or low effective feature of these punishments on the delinquent personality and as the result reformation of the criminal personality

4-public beneficial works

Below solutions are presented for delinquent social reformation, so the main public works benefits includes as below:

1-the ordered and targeted operation in addition to have the responsibility for a free of payment working

2-required grantees to compensate damages and social reconstruction through working by delinquent

3-in addition to above items, the public service are provided to obtain social targets and reduction of crime repetition danger as below steps:

5-protecting suspension

The protecting suspension is a punishment method on the basis of training and also realization that is identified by supervision and assistance and under suspension individual has to follow all regulations ordered by court, united nation also has presented below definition: the protecting suspension is the method for treating criminals which is selected specially and suspension that is conditional to the criminal punishment during the time when the person is under supervision, he will be treated or directed.

6-the compressed protecting suspension:

The compressed supervision main criterions are including:

1-frequent contact between the recovery agents and delinquents

2-follwong a series of requirements as occupational training, working, public services and drug laboratories or addicted treatment in some of limitations of transportation avoidance

7-using cash punishment instead of imprisonment

The cash punishment in contrast to the imprisonment will avoids corruption and disgrace, also it is possible to amortize the cash fin according to the criminal life condition and avoid the number of prisoners and also prevent the costs. Using other punishments as the lashing and deprivations which are available in Islam too could be influential because the lash punishment is only for the criminal and don’t hurt others and it is more rational than imprisoning and over crowd of prisons
The house arrestment which is known as imprisonment at house actually is a series of limiting guarantee that includes avoidance from transportation at night to surrounding at house in none-working offices. The house arresting concept forces the criminals to spend more hours at home instead of imprisonment at prison.

Research hypotheses:

1- Because the prison punishment is for retribution and the ruler decision is possible to be substituted and issues as the lash and presenting the social services could be displaced with the prison punishment, the main hypothesis

2- The Shia jurisprudence and principals for the punishments are the bases. Prison is one of the punishments that is provided according to the punishment law and there are substitutions for it that according to performed evaluations and Islamic jurisprudence illustration, it seems that there are some roots in the past jurisprudential texts and recent rules, subsidiary hypothesis

3- It is correct that in some of retribution the prison punishment is beneficial and it has some prevention effect but it should be considered that in many of cases, we should not ignore the negative results and damages of prison. So in some cases, it does not have conformity with the purpose of recovery and treating and even preventing, subsidiary hypothesis

4- according to the bases and principals as the jurisprudence rule, there are some substitutions for prisoning that required guarantee is provided for recovery and treating the criminal , in addition to lack of imprisonment consequences

5- Because based on the jurisprudence principal, maybe we can suggest other punishments as lash, exile and public services and deprivation from social and political rights, subsidiary hypothesis

Research results:

Because the bases and principals in the Islamic republic of Iran retribution law is the Shia jurisprudence and according to the punishment rules mentioned in anecdotes and verses in Quran and by documentation to the jurisprudence reason and the authority definite rule, it is determined by the Islamic rule (Islamic administration) and by benefit assessment and regarding the Islamic profits and society, the evaluation of corruptions and more proper punishment has been predicted. The domain of this discussion is not limited to the punishment rather in some of cases even the Islamic system is faced with challenges and threats- as the pious women adultery punishment- there is possibility to change and transfer the divine punishment as stoning temporally. As it was mentioned before the mentioned divine punishment in anecdotes and verses which are defined from the religious rule exists in some of the cases and by consideration of Islamic ruler and under some condition there is possibility of changing retribution. As it was mentioned before the divine punishments mentioned in Quran and anecdotes are determined by the divine law and in some cases by the Islamic realization and under some condition there is possibility of changing as the rubbery in which the criminal committed stealing in the third
degree and he his punished to the eternal imprisonment and during the punishment execution according to the commitment degree and the leader realization, he is freed and forgiven and leader can change his punishment to other type. Now in discussion about the retribution there is possibility to change or transfer the punishment because in retribution the authority and the degree of punishment are under the ruler decision. On the other hand based on the jurisprudence definite rule and the punishment degree are under the Islamic ruler authority, so the changing and adjustment of punishment is under the ruler liability, the vivid sample could be observed about the punishment imprisonment that in some ceremonies and holy event by evaluation of prisoners properties and by considering the required condition and based on the jurisdiction system manager request from the supreme leader, it is proceeded for some prisoners and either they are dismissed or their punishment is changed. During the punishment execution by stating the repentance and supreme leader decision, prisoners are freed or the leader could change their punishment to other retractions.

The jurisprudential sources and anecdote also have mentioned lash as the low main punishment in retribution and no accurate and clear criterion is presented for determination of imprisoning duration and only a series of general criterions are summated briefly, despite no definite samples are presented for the imprison substitution, but the basis and the general principal has been mentioned in retribution based on the Islamic ruler authority and regulation that the jurisdiction power executes according to the Islamic government substitutions as the imprisonment beneficial for the public and it does not cause corruption that such issue is due to the Islamic retribution system power points because the retribution regulations have regarded the failures and complex problems and also the imprisonment defects and in many issues the lash punishment is suggested.

Suggestions and solutions:

1- Edition of comprehensive and preventive law in the field of imprisonment substitution according to the Shia jurisprudence.
2- The jurisdiction power and responsible institutions should provide the proper basis for the judges training to remove the prison damages and determination of substitution programs instead of imprisonment.
3- Supervision solutions and treating techniques and responsible agents to execute them and the limit of duties and authorities should be clarified in law accurately.
4- The successful experience and performed studies should be used in other countries all around the world about this case.
5- Removing imprisonment through the organizational internal proceeding that could lead to organizational chart variation in order to concentrate the facilities and powers to reduce number of imprisonments.
6- Iran retributions regulations- for example the preventing punishments in 1994- according to the Islamic administration authorities in this discussion should be reviewed and reconsidered in direction of imprisonment reduction policy.
7- Forcing the criminal to perform public works according to the type of crime and the punishment duration and other solutions which present the realization about rights of other citizen to them.

8- Working in some organizations in which the presence of such people has low danger as soldiers who are responsible for military service, is considered as the solution which avoid keeping prisoners in prison and occurring dangers

9- Determination of small geographical area by the judge according to the crime type and the personality of criminal and giving some freedom to him just in this small area in addition to provide the freedom sense to delinquent, he is protected from worse trainings inside the prison.
Books:

1- Ashory, Mohammad, substitutions for prison or fundamental punishments, Tehran, Geriysh publication, 2002
2- Ashory, Mohammad, retribution justice, knowledge treasure publication, first edition, 1996
3- Ardebeli, Mohammad Ali, the public punishment law, Tehran, Mizan publication, sixth edition, volume 2 published in 2003
4- Aqha Bakhshi, Habibi, addiction and family pathology, Tehran, life science university publication, rehabilitation, published in 1998
5- Baqery, Bidhendy, Nasser, imprisonment in Islamic view, Qom, mohammam publication published in 1981
7- Jafar Langeroudy, Mohammad Jafar, law terminology, Tehran, knowledge treasure publication laboratory, published in 2006, sixteenth edition
8- A group of writers, retribution in jurisprudence and punishment law, Qom, Islamic thoughts and culture research center, second edition, 2007
9- Hosseiny, Seyed Mohammad, the criminology policy in Islam and in islamic republic of Iran, Tehran, Tehran university publication, first edition, 2004
11- Abdi, Abbas, social pathology about the prison effects on prisoner, Qom, nour research and publication institution
12- Ali abady, Abdolhosein, the criminal law, Firdausi publication in 1984
13- Qhias, Jalal Aldin, the adaptive study of public punishment law, volume 2, the principal 2, published in 1997

Articles:

1- Ebrahim pour Lialasty, Hussein, the targets of punishment in the retribution law view and religious training, Adyan, religions, eruditions and piety 2006, volume 106, page 86
2- Amanym, Davoud, prison the school of newcomer delinquents, the right and judgment published in 2003, volume 13, pages 52 to 55
3- Rabie, Naser, the research topic; valuation of special meeting provision for prisoners in crimes reduction and the crimes inside the prison, operator; the prisons organization researching and training center, 1997
4- Majidie Bidgule, Kabiry and Somayeh Kish Kashany, the prisons training organization recovery magazine, volume 74, published in 1998
5- Mohammad Nezhad, Parviz, the prisons training organization recovery magazine, fourth edition, volume 46
6- Mohammad Fard, Hamid, research; evaluation of imprisonment in the prisoner family, the training center and the prisoner organization research, 1997
7- Mohamady Fard, Hamid research, evaluation of country prison description and determination of their problems, the prisons organizations researching and trading center, 2002
9- Makarem Shirazy, Naser, the prison philosophy article mentioned in the Islam school magazine, volume3, edition 25, page 14